

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COSTIN DUMITRESCU, MARIN ALEXANDRU,
and JOSIP RICOV, on behalf of themselves
and all others similarly situated,

Plaintiffs,

-against-

MR. CHOW ENTERPRISES, LTD., T.C. VENTURES, INC., MC TRIBECA, LLC, MR. CHOW NEW YORK ENTERPRISES, INC., WILDMAN GROUP, INC., and MICHAEL CHOW, individually,

Defendants.

07 Civ 3601 (PKL) (HBP)

**AFFIDAVIT IN SUPPORT
OF COLLECTIVE ACTION
MOTION**

ECF CASE

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss:

COSTIN DUMITRESCU, being duly sworn, deposes and, upon personal knowledge, says:

1. I am a plaintiff in the above captioned matter. I reside at 602 Grandview Avenue, Ridgewood, New York, 11385. This affidavit is submitted in support of plaintiffs' motion to certify a collective action for current and former captains, waiters, bartenders, and busboys at Mr. Chow restaurants located at 324 East 57th Street, New York, New York, 10022 ("Mr. Chow 57th Street") and 121 Hudson Street, New York, New York, 10013 ("Mr. Chow Tribeca") (collectively hereinafter "Mr. Chow").

2. I was employed first as a busboy, then as a waiter, and then a captain at Mr. Chow 57th Street and Mr. Chow Tribeca from 1995 until July of 2006.

3. The suggestion that Mr. Como and Mr. Muratovic were mere maitre d's and not managers of the restaurant is simply not true. In fact, they were referred to as managers and acted as managers. They ran the show at the restaurant and were at all

times the individual of the highest authority at the restaurant (unless Mr. Chow, himself, was present).

4. The claim that Mr. Como and Mr. Muratovic were not managers is belied by the business card of Mr. Como, which clearly indicates that Mr. Como is the "Manager" at Mr. Chow. A copy of that business card is annexed hereto as Exhibit A.

5. Other documents from Mr. Chow also show that Mr. Como and Mr. Muratovic were managers. For example, Brian Muratovic gave me a letter of recommendation dated November 19, 1998, on Mr. Chow letterhead, which was signed by Muratovic as "Manager." A copy of that letter is annexed hereto as Exhibit B.

6. Checks for parties of six or more do not have an added service charge; rather, they state that there is a "Gratuity 20.00%" added to the total. Notably, Mr. Chow's Daily Tip Distribution sheets include both "20% mandatory service charge[s]" and discretionary tips and do not distinguish between the two. The sheets merely list the total amounts of credit card and cash tips, and the distribution among the various employees – including a house share at a 20-point value. A copy of bills indicating the 20% gratuity is annexed hereto as Exhibit C. A copy of the Daily Tip Distribution from April 13, 2007 is annexed hereto as Exhibit D.

7. The managers at Mr. Chow receive tips from Mr. Chow customers while performing their duties at the door, sometimes in excess of \$1000 per night. However, these tips are never included in the tip pool from which tips are distributed to employees. Annexed hereto as Exhibit E is a note by Muratovic indicating that he received \$800 in tips at the door, on top of his cut from the pool, on January 8, 2004.

8. Mr. Muratovic had control over the hiring and firing of employees at Mr. Chow and set employee schedules. If employees needed to take vacation time or sick leave, they had to ask Mr. Como or Mr. Muratovic. In the case of sick leave, they had to

bring a doctor's note to the managers. The managers were responsible for assigning waiters to different sections of the restaurant, as well as assigning different tasks to them. In addition, the managers controlled the number of points employees had, thereby determining each employee's stake in the tip pool.

9. The managers run the show at Mr. Chow and are the individuals who manage and make decisions at the restaurant. Defendants would have this Court believe that the restaurant runs by itself. The truth is that the managers are the individuals with the highest authority at the restaurants.


COSTIN DUMITRESCU

Sworn to before me this
4th day of February, 2008


NOTARY PUBLIC

LOUIS PECHMAN
Notary Public, State of New York
No. 02PE5079601
Qualified in Nassau County
Commission Expires June 9, 2011

EXHIBIT A

Gaspare Como

MANAGER

MR CHOW 57TH
324 EAST 57TH STREET
NEW YORK, NY 10022
212 751 9030

MR CHOW TRIBECA
121 HUDSON STREET
NEW YORK, NY 10013
212 965 9500
gaspare@mrchow.com

DUMITRESCU 0001

EXHIBIT B

TO whom it MAY CONCERN

I have known Costin since
1995, he got married in oct.
1998 with Olga. They are a wonder
ful couple. we ARE good Friends;
we used to go out to clubs to
gather he is a nice out going and
Simple Guy.



Manager MR
Cltow Res.

Brian Murati =
212 751 9030
2/25/00 —

EXHIBIT C

MR CHOW
121 Hudson St
New York, NY 10013
212-965-9500

* * * * *

Server: Javier 05/02/2007
Cashier: Ned
Table 1/1 10:18 PM
Guests: 7 30063
Reprint #: 1

Evian (5 @10.00)	50.00
Coke (6 @4.00)	24.00
Absolut Mandarin (2 @11.00)	22.00
Crown Royal	11.00
Prix Fixe (Dinner) (7 Guest)	378.00
@ 54.00 per Guest	
Absolut Mandarin (3 @11.00)	33.00
Tsing Tao (3 @7.00)	21.00
J&B (2 @11.00)	22.00
Snow Pea Sprouts (4 @6.00)	24.00
Cappuccino	5.00
Hot Tea	4.00

Sub Total	594.00
Tax	49.75

Total	643.75
Gratuity 20.00%	118.80
Total	762.55

Balance Due 762.55

1968 LONDON 0207-589-7347
1974 BEV. HILLS 310-278-9911
1979 NY 57th ST. 212-751-9030
2008 LAS VEGAS & MIAMI

LUNCH OPEN PRIVATE EVENTS ONLY

MR CHOW
121 Hudson St
New York, NY 10013
212-965-9500

* * * * *

Server: Dario 05/02/2007
Cashier: Ned
Table 17/1 9:03 PM
Guests: 7 10004
Reprint #: 1

Evian	10.00
Pelligrino (2 @10.00)	20.00
Belvedere (4 @12.00)	48.00
House Chardonnay GLS (2 @15.00)	30.00
Bombay Sapphire	12.00
Stolichnaya Orange	11.00
Grey Goose	12.00
Ginger Ale	4.00
Prix Fixe (Dinner) (7 Guest)	378.00
@ 54.00 per Guest	
Jade Har Gow (2 @11.50)	23.00
Stolichnaya Orange	11.00
Ginger Ale (2 @4.00)	8.00
Grey Goose (7 @12.00)	84.00
Laurent Perrier-Glass	30.00
Tsing Tao (2 @7.00)	14.00
Chocolate Cake (2 @10.00)	20.00
Mixed Fruit	10.00
Coconut Sorbet	10.00
Pineapple Sorbet	10.00
Pear Tart	10.00

Sub Total	755.00
Tax	63.23

Total	818.23
Gratuity 20.00%	151.00
Total	969.23

Amex #XXXXXXXXXX1000	969.23
Auth:513208	

• Tip:

EXHIBIT D

MR CHOW – TRIBECA
Daily Tip Distribution

Day: FRIDAY Date: 4/13/07

	Point	On	Total Tips	Tip Declaration		
CAPTAINS						
ISTAVAN	19	✓	269	228		
DRAGOS	17					
LINO	17	✓	241	204		
NED	17 17	✓	241	204		
SERVICES						
DARIO	15	✓	213	180		
HUGO	15	✓	213	180		
CARMINE	15	✓	213	180		
MUSA	15					
JAVIER	14	✓	199	168		
GABRIEL	12	✓	170	144		
BARTENDERS						
JOANNA	14	✓	199	168		
ASST. SERVERS					Total C.Card Tips	\$ 2750
FRANCISCO	10	✓	142	120	Total Cash Tips	\$ 503
NAHUM	7	✓	99	84	Private Party	\$
NICHOLAS	6		85		Bar Tips	\$
ALFREDO	6	✓	85	72	Cashier Tip	\$
					Other Tip	\$
RUNNERS					TOTAL TIPS	\$ 3253
CRUZ	10	✓	199	120		
CESAR	9	✓	128	108		
ROBERTO	8	✓	113	96		
ARTHUR	8	✓	113	96	Total Points	229
JOSE	7	✓	99	84	Each Point Value	\$ 14.20
JESUS	6	✓	85	72		
RECEPTION						
SONIA	3					
STEPH	3					
House – Service 20 pts			✓	\$ 284		

12.00

DUMITRESCU 0003

J
R

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8

EXHIBIT E

2004
W T F S
4 5 6 7
11 12 13 14
18 19 20 21
25 26 27 28

Thursday January 8

8/358

Thurs. Busy
271 Covers
New Mail
\$800 Door
582
1382

AT-A-GLANCE